

TRANSLATION

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference M/44296-PCT	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/013984	International filing date (<i>day/month/year</i>) 08.12.2004	Priority date (<i>day/month/year</i>) 09.12.2003
International Patent Classification (IPC) or national classification and IPC C08F220/54, C08F220/18, C08F220/06, A61 K7/48		
Applicant BASF AKTIENGESELLSCHAFT		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising: a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of <u>7</u> sheets, as follows: <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4. This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-45 _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* 1-30 _____ received by this Authority on 05.11.2005 with letter of 03.11.2005
- nos.* _____ received by this Authority on _____
- ☐ the drawings:
- sheets _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1.	Statement		
	Novelty (N)	Claims <u>1-30</u>	YES
		Claims _____	NO
	Inventive step (IS)	Claims _____	YES
		Claims <u>1-30</u>	NO
	Industrial applicability (IA)	Claims <u>1-30</u>	YES
		Claims _____	NO
2.	Citations and explanations (Rule 70.7)		
1.	<p>The subject matter of the claims is novel over the documents cited in the search report (PCT Article 33(2)). None of the prior art citations discloses cosmetic or pharmaceutical agents based on a copolymer that must contain tert.-butyl acrylate and acrylic acid in addition to a monomer containing an amide group.</p>		
2.	<p>The subject matter of the claims does not involve an inventive step (PCT Article 33(3)).</p> <p>It is clear from the claims of D1 (DE-A-43 14 305) that the monomer composition of the copolymers cited therein can be extensively varied. The mere selection of the monomers according to the present claim 1 (tert.-butyl acrylate + an acrylamide + acrylic acid) does not involve an inventive step since it would be expected that in any selection within the context of D1 the corresponding copolymers would be suitable for use in haircare agents.</p> <p style="text-align: right;">/...</p>		

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
	<p>The same also applies in respect of D4 (US-A-3 927 199) and in particular of D5 (US-A-4 748 989). The table in D5 gives various acrylamides as monomers, in addition to tert.-butyl acrylate and acrylic acid. The fact that, by chance, the table does not include any example with the combination of monomers as per the application might support novelty, but not the presence of an inventive step.</p> <p>The present claim 1 is not directed to hairsprays but to cosmetic and pharmaceutical agents in general. According to the description, if the copolymers show any effect that originates from the monomer composition, said effect should relate only to hairsprays and not to cosmetic agents in general. What effect should be shown by which specific pharmaceutical agents is not clear from the application as originally submitted.</p> <p>3. Industrial applicability (PCT Article 33(4)) is acknowledged.</p>

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. In claim 1 and claims 19-21, which refer back to claim 1, the alternative tert.-butyl acrylate "and/or" tert.-butyl methacrylate is given. The "or" option should be omitted in view of the amendments made in said claims (PCT Article 6).